

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Dennis Pointer,
Plaintiff/Appellant

vs

Case No. C-1-02-486

Sergeant Lyons, et al.,
Defendants/Appellees

(Beckwith, J.; Novotny, M.J.)

**ORDER GRANTING PRISONER *IN FORMA*
PAUPERIS STATUS AND ORDERING THE
COLLECTION OF THE FULL FILING FEE**

Plaintiff/appellant filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) in connection with an appeal of the dismissal of a civil suit. (Docs. 79, 80). In accordance with section 804(a)(3) of the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915(b)(1), plaintiff/appellant must pay an initial partial filing fee of 20 percent of the greater of the average monthly deposits to his prison account or the average monthly balance in his account for the six month period immediately preceding the filing of the notice of appeal. After payment of the initial partial filing fee, plaintiff/appellant is further required to make monthly payments of 20 percent of the preceding month's income credited to his prison account until he pays the full amount of the filing fee. 28 U.S.C. § 1915(b)(2).

Plaintiff/appellant's application reveals that he has insufficient funds in his prison account to pay the full filing fee.

After consideration by this Court of the plaintiff/appellant's affidavit of indigence only, without regard to the merits of this appeal, plaintiff/appellant's motion to proceed *in forma pauperis* is hereby **GRANTED** pursuant to 28 U.S.C. § 1915(a).

Pursuant to 28 U.S.C. §1915(b)(1), the custodian of plaintiff/appellant's inmate trust fund account at the institution where he now resides is directed to calculate, as an initial partial payment, twenty percent (20%) of the greater of:

(a) the average monthly deposits to the inmate trust account; or

(b) the average monthly balance in the inmate trust account, for the six (6) months immediately preceding September 11, 2003.¹ The custodian is ORDERED to complete and to submit to the Clerk of Court in Cincinnati, Ohio the attached form showing his calculation of the initial partial filing fee. The custodian is further ORDERED to forward from plaintiff/appellant's prison account to the Clerk of Court located in Cincinnati, Ohio the initial partial filing fee, as funds become available in plaintiff/appellant's account until the initial filing fee is paid. Even if the account is under ten dollars (\$10.00), the custodian must still forward payments to the Clerk of Court to pay the initial filing fee.

After full payment of the initial partial filing fee, the custodian shall forward to the Clerk of Court located in Cincinnati, Ohio monthly payments of twenty percent (20%) of plaintiff/appellant's preceding monthly income credited to his prison account, but only when the amount in the account exceeds ten dollars (\$10.00), until the full fee of one hundred and five dollars (\$105.00) has been paid to the Clerk of the Court. 28 U.S.C. §1915(b)(2).

¹ The assessment of the partial filing fee is based on the six month period immediately preceding the filing of the notice of appeal. Since the notice of appeal is *deemed* filed with the clerk of the district court when the prisoner provides the notice of appeal to prison authorities for mailing, the date the prisoner gives the notice of appeal to the prison for mailing is the date to be used to determine the initial partial filing fee. See *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997) and cases cited therein. Because the Court cannot discern from plaintiff's submissions when he tendered his notice of appeal to prison officials, the Court shall use the date the notice of appeal was filed in the district court as the controlling date.

The prisoner's name and case number must be noted on each remittance.

Checks are to be made payable to: **Clerk, U.S. District Court.**

Checks are to be sent to:

**Prisoner Accounts Receivable
324 Potter Stewart United States Courthouse
100 East 5th Street
Cincinnati, Ohio 45202**

IT IS SO ORDERED.

Date: 11/4/2003

s/Susan M. Novotny
Susan M. Novotny
United States Magistrate Judge

CALCULATION OF INITIAL PARTIAL FILING FEE

Prisoner's name_____

Case no._____

Average Monthly Balance \$_____
(For six month period preceding filing of complaint or notice of appeal)

Average Monthly Deposits \$_____
(For six month period preceding filing of complaint or notice of appeal)

Initial Partial Filing Fee \$_____
(the greater of the average monthly deposits or the average monthly
balance x .20)

Date

Signature of Authorized Officer